



# Florida Department of Environmental Protection

Southeast District  
400 North Congress Ave., Suite 200  
West Palm Beach, FL 33401

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

April 27, 2007

Ms. Marie Burns  
Chief, Environmental Branch  
U.S. Army Corps of Engineers  
Jacksonville District  
701 San Marco Boulevard  
Jacksonville, FL 32207-8175

Re: File No.: EE 50-0234604-005  
File Name: Herbert Hoover Dike Reach 1A Seepage Cutoff Wall

Dear Ms. Burns:

On March 30, 2007, we received your request to continue to use *deminimus* exemption #0234604-001, issued on August 2, 2004, to perform the following activity: Install a seepage cutoff wall along the centerline of the levee for Reach 1A of the Herbert Hoover Dike Rehabilitation and Repair Project. Since this exemption has expired, the Florida Department of Environmental Protection (Department) cannot modify it and will need to issue a new *deminimus* exemption for this project. It is noted that the current design for the seepage cutoff wall is slightly different than the original design that was submitted for the previous exemption. The project is located on Lake Okeechobee, Class I Waters, adjacent to U.S. Highway 98/441 (Sections 22, 26, 35, Township 40 South, Range 37 East; and Sections 2, 11, 14, 23, 27, 34, Township 41 South, Range 37 East ) in Martin and Palm Beach Counties.

Your application has been reviewed to determine whether it qualifies for any of three kinds of authorization that may be necessary for works in wetlands or waters of the United States. The kinds of authorization are (1) regulatory authorization, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal authorization (State Programmatic General Permit). The authority for review and the outcomes of the reviews are listed below. Please read each section carefully. Your project **may not** have qualified for all three forms of authorization. If your project did not qualify for one or more of the authorizations, refer to the specific section dealing with that authorization for advice on how to obtain it.

## 1. Regulatory Review. – GRANTED

The Department has reviewed the submitted information and has determined that the project is not expected to cause the release of pollutants in sufficient quantity, quality, content, or character with respect to the circumstances surrounding the location, use, and operation of the project, as to contribute to pollution in contravention of the provisions of Chapters 373 and 403, Florida Statutes (F.S.), or Title 62, Florida Administrative Code (F.A.C.).

Therefore, based solely upon the documents submitted to the Department, the project to install a seepage cutoff wall along the centerline of the levee for Reach 1A of the Herbert Hoover Dike has been determined to qualify as an activity that is exempt from the need for an environmental resource permit pursuant to Chapter 373.406(6), F.S.

This determination is applicable only pursuant to the statutes and rules in effect at the time the information was submitted. This determination may not be valid in the event subsequent changes occur in the applicable statutes and rules of the Department. Pursuant to Rule 62-302, F.A.C., activities that qualify for this exemption must be constructed and operated using appropriate best management practices and in a manner that does not cause water quality violations.

The determination that your project qualifies as an exempt activity pursuant to Chapter 373.406(6), F.S., may be revoked if the installation is substantially modified, or if the basis for the exemption is determined to be materially incorrect, or if the installation results in water quality violations. Any changes made in the construction plans or location of the project may necessitate a permit or certification from the Department. Therefore, you are advised to contact the Department before beginning the project and before beginning any work in waters or wetlands which is not specifically described in your submittal.

## **2. Proprietary Review. – NOT REQUIRED**

The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and issues certain authorizations for the use of sovereign submerged lands. The Department has the authority to review your project under Chapters 253 and 258, F.S., Chapters 18-20 and 18-21, F.A.C., and Section 62-343.075, F.A.C.

Your project will not occur on sovereign submerged land. Therefore, pursuant to Chapter 253.77, F.S., authorization from the Board of Trustees is not required. The Herbert Hoover Dike is subject to a Board of Trustees Lease Agreement No. 3307 issued to the South Florida Water Management District. Right of Entry granted by the South Florida Water Management District for the proposed project may be required.

## **3. Federal Review (SPGP) – NOT REQUIRED**

Federal authorization for the proposed project is reviewed by DEP pursuant to an agreement between the Department and the U.S. Army Corps of Engineers (Corps). The agreement is outlined in a document titled *Coordination Agreement Between the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection State Programmatic General Permit, Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act*.

Since the applicant is the Corps, the Department will require no permitting for this activity by the Corps.

The determinations in this letter are based solely on the information provided to the Department and on the statutes and rules in effect when the application was submitted. The determinations are effective only for the specific activity proposed. These determinations shall automatically expire if site conditions materially change or if the governing statutes or rules are amended. In addition, any substantial modifications in your plans should be submitted to the Department for review, as changes may result in a permit being required. In any event, this determination shall expire after two years.

This letter does not relieve you from the responsibility of obtaining other permits (federal, state, or local) that may be required for the project.

## **NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS**

This letter acknowledges that the proposed activity is exempt from ERP permitting requirements under Chapter 373.406(6), F.S. This determination is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. The procedures for petitioning for a hearing are set forth in the attached notice.

This determination is based on the information you provided the Department and the statutes and rules in effect when the application was submitted and is effective only for the specific activity proposed. This determination shall automatically expire if site conditions materially change or the governing statutes or rules are amended. In addition, any substantial modifications in your plans should be submitted to the Department for review, as changes may result in a permit being required. In any event, this determination shall expire after two years.

Be advised that your neighbors and other parties who may be substantially affected by the proposed activity allowed under this determination of exemption have a right to request an administrative hearing on the Department's decision that the proposed activity qualifies for this exemption. Because the administrative hearing process is

designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in a final determination that the proposed activity is not authorized under the exemption established under Chapter 373.406(6), F.S.

The Department will not publish notice of this determination. Publication of this notice by you is optional and is not required for you to proceed. However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permit.

If you wish to limit the time within which all substantially affected persons may request an administrative hearing, you may elect to publish, at your own expense, the enclosed notice (Attachment A) in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place. A single publication will suffice.

If you wish to limit the time within which any specific person(s) may request an administrative hearing, you may provide such person(s), by certified mail, a copy of this determination, including Attachment A.

For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of sections 50.011 and 50.031 of the Florida Statutes. In the event you do publish this notice, within seven days of publication, you must provide to the following address proof of publication issued by the newspaper as provided in section 50.051 of the Florida Statutes. If you provide direct written notice to any person as noted above, you must provide to the following address a copy of the direct written notice.

Florida Department of Environmental Protection  
Southeast District  
Water Resource Management and Environmental Planning Section  
400 N. Congress Ave., Suite 200  
West Palm Beach, FL 33401

If you have any questions, please contact Stan Ganthier at (561) 681-6759 or [Stanley.Ganthier@dep.state.fl.us](mailto:Stanley.Ganthier@dep.state.fl.us). When referring to your project, please use the FDEP file name and number listed above.

Sincerely,

 4/27/07  
Date

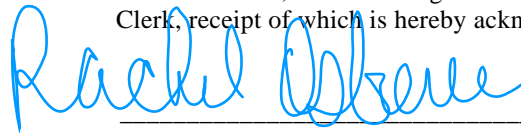
Timothy Rach  
Acting District Director  
Florida Department of Environmental Protection  
Southeast District

Enclosures

cc: Marie Burns, SAJ ([Marie.G.Burns@saj02.usace.army.mil](mailto:Marie.G.Burns@saj02.usace.army.mil))  
Mark Shafer, SAJ ([Mark.D.Shafer@saj02.usace.army.mil](mailto:Mark.D.Shafer@saj02.usace.army.mil))  
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Kenny Hayman, DEP ([kenneth.hayman@dep.state.fl.us](mailto:kenneth.hayman@dep.state.fl.us))

### FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to 120.52(9),  
Florida Statutes, with the designated Department  
Clerk, receipt of which is hereby acknowledged.

 4-27-07  
\_\_\_\_\_  
Clerk Date

### GENERAL CONSENT CONDITIONS:

- (1) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
- (2) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
- (3) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
- (4) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
- (5) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.
- (6) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
- (7) Structures or activities shall not create a navigational hazard.
- (8) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.
- (9) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(f), F.A.C., or any other applicable law.

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF DETERMINATION OF EXEMPTION

The Department of Environmental Protection gives notice that the installation of a seepage cutoff wall along the centerline of the levee for Reach 1A of the Herbert Hoover Dike Rehabilitation and Repair Project has been determined to be exempt from requirements to obtain an environmental resource permit. The project is located on Lake Okeechobee, Class I Waters, adjacent to U.S. Highway 98/441 (Sections 22, 26, 35, Township 40 South, Range 37 East; and Sections 2, 11, 14, 23, 27, 34, Township 41 South, Range 37 East ) in Martin and Palm Beach Counties between Port Mayaca and Sand Cut.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Mediation is not available.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

In accordance with rules rule 62-110.106(3), F.A.C., petitions for an administrative hearing must be filed within 21 days of publication of the notice or receipt of written notice, whichever occurs first. Under rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 prior to the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. Upon motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect, the Department may also grant the requested extension of time.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing shall be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

Complete copies of all documents relating to this determination of exemption are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at the Southeast District office, 400 North Congress Avenue, West Palm Beach, Florida.